



DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2022-02; Exemption

Application No. L-12008]

Exemption from Certain Prohibited Transaction Restrictions

Involving Phillips 66 Company (Phillips 66 or the

Applicant) Located in Houston, TX

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of exemption.

SUMMARY: This document contains a notice of exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). Under the exemption, the Phillips 66 Group Life Insurance Plan (the Plan) will enter into an insurance contract with an unrelated A-rated insurance company (the Fronting Insurer) that will, in turn, enter into a reinsurance contract with Spirit Insurance Company (Spirit), an affiliate of Phillips 66 (the Reinsurance Arrangement). Under the Reinsurance Arrangement, Spirit will reinsure the Plan's risks.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Brennan of the Department at (202) 693-8456. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 20, 2021, the

Department published a notice of proposed exemption in the Federal Register at 86 FR 52210, permitting: (1) the reinsurance of risks; and (2) the receipt of premiums by Spirit in connection with insurance contracts sold by Zurich American Life Insurance Company (or any successor Fronting Insurer) to provide Group Term Life and Accidental Death and Dismemberment benefits to Plan participants.

This exemption provides only the relief specified in the text of the exemption. It provides no relief from violations of any law other than the prohibited transaction provisions of ERISA expressly stated herein.

The Department makes the requisite findings under ERISA Section 408(a) based on adherence to all of the conditions of the exemption. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, taken as a whole, necessary for the Department to grant the relief requested by the Applicant. Absent these or similar conditions, the Department would not have granted this exemption.

The Applicant requested an individual exemption pursuant to ERISA Section 408(a) in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).

WRITTEN COMMENTS

In the proposed exemption, the Department invited all interested persons to submit written comments and/or

requests for a public hearing with respect to the notice of proposed exemption. All comments and requests for a hearing were due to the Department by November 5, 2021. The Department received one written comment from the Applicant and three calls from Plan participants seeking to better understand the proposed exemption. The Department did not receive any requests for a public hearing from any of the commenters.

Comments from the Applicant

I. Text of Exemptive Relief in Section II

Section II of the proposed exemption at 86 FR 52215 states: "The exemption would provide relief from the prohibited transactions provisions of ERISA sections 406(a)(1)(A), (D), and 406(b)(1) and (b)(3), and the excise tax imposed by Code section 4975(a) and (b) (due to the operation of parallel prohibited transaction provisions contained in Code section 4975(c)(1)(A), (D), (E), and (F)) with respect to..."

The Applicant notes that it requested exemptive relief from ERISA Sections 406(a)(1)(A), (C) and (D), and 406(b)(1), (2), and (3), along with the parallel provisions of the Code.

The Applicant requests that the Department either directly state that it does not need relief from ERISA Sections 406(a)(1)(C) and 406(b)(2) because the Reinsurance Arrangement would not violate those sections, or broaden the

exemption in Section II to include relief from ERISA Sections 406(a)(1)(C) and 406(b)(2).

Department's Response: The Department intended to include exemptive relief from ERISA Section 406(b)(2) in Section II of the proposed exemption and has revised that section of the exemption accordingly. However, the Department is not revising the proposed exemption to include relief from ERISA Section 406(a)(1)(C). Such relief is available to the Applicant to the extent it meets the requirements of ERISA Section 408(b)(2), a statutory exemption that provides exemptive relief from the prohibitions of ERISA Section 406(a) for, among other things, contracting or making reasonable arrangements with a party in interest for services necessary to operate the plan. Relief in the statutory exemption is conditioned on certain requirements being met that are not included in the conditions of this exemption. The Department could not make a finding that the exemption would be in the interest of the Plan if the Department provided the Applicant with exemptive relief from ERISA Section 406(a)(1)(C) without requiring it to meet the additional protections afforded by ERISA Section 408(b)(2) and the requirements set forth in Department's regulations issued thereunder (29 CFR §2550.408b-2).

Department's Note: Since the Plan is not subject to the provisions of Title II of ERISA, the Department has

revised the scope of relief in the exemption by removing references to Code Sections 4975(c)(1)(A), (D), (E) and (F).

II. Limitations on the Use of Participant-Related Data or Information

Section III(o) of the proposed exemption states that:
"Neither Phillips 66 nor any related entity may use participant-related data or information generated by or derived from the Reinsurance Arrangement in a manner that benefits Phillips 66 or a related entity..." Preamble

Section 5 of the proposed exemption states: "The Department developed this proposed exemption based on the Applicant's representation that Phillips 66 is not expected to receive any benefit from the Reinsurance Arrangement other than the net income increase described herein, which must be verified annually by the Independent Fiduciary."

The Applicant states that, while it does not object to the Department's concept of an express prohibition on misuse of participant data, it is concerned that the specific language of the prohibition in Section III(o) is too broad, and may prohibit activity the Department did not intend to prohibit. The Applicant further states that the Preamble description explaining Section III(o) is even broader than the actual text of Section III(o), stating that "...any participant-related data..." from the Reinsurance Arrangement cannot be used "...in any manner..." that "benefits" Phillips 66 or an affiliate.

The Applicant reiterates that Phillips 66 intends to derive no additional benefit from the Reinsurance Arrangement other than what it has already disclosed, and states that the proposed exemption's broad language could be read to prevent Phillips 66 from using participant data and information in perfectly appropriate ways related to better plan administration. For example, the Applicant asserts that claims data may be used to improve claims processing and risk mitigation or to determine whether and how to enhance benefits. The Applicant states that these purposes would benefit participants but might also be seen to benefit Phillips 66.

Accordingly, the Applicant requests the following modification to Section III(o): "Neither Phillips 66 nor any related entity may benefit from the use of participant-related data or information generated by or derived from the Reinsurance Arrangement for purposes unrelated to Phillips 66's role as a plan sponsor and/or employer...." The Applicant states that this language achieves the Department's objectives without unintentionally limiting the appropriate use of plan and participant data.

Department's Response: The Department declines to make the Applicant's requested revisions. The prohibition against the use of participant-related data by Phillips 66 is intentionally expansive in order to protect the interest of

each affected Plan participant as required by ERISA section 408(a). The Applicant has not demonstrated that the Plan's participants and beneficiaries would, in all instances, be adequately protected if Phillips 66 were to use plan-related data in its role as a plan sponsor and/or employer. However, the Department has revised Section III(o) to clarify that the condition does not preclude Phillips 66 from using participant-related data solely to improve the administration of the Plan, or to enhance the Plan's benefits. Phillips 66 may contact the Office of Exemption Determinations to the extent it is unsure whether its potential future use of participant-related data would violate this condition.

III. Technical Edits

The Department has revised the exemption consistent with two non-substantive edits identified by the Applicant involving the numbering and lettering of certain paragraphs and sub-paragraphs. For clarity, the Department added a new definition, which defines the term "Plan" as the Phillips 66 Group Life Insurance Plan.

Accordingly, after considering the entire record developed in connection with the Applicant's exemption application and comment letter, the Department has determined to grant the exemption described below.

The complete application file (L-12008) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N-1515, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 28, 2021, at 86 FR 34048.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA Section 408(a) does not relieve a fiduciary or other party in interest from certain requirements of other ERISA provisions, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA Section 404, which, among other things, require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with ERISA Section 404(a)(1)(B).

(2) As required by ERISA Section 408(a), the Department hereby finds that the exemption is: (a)

administratively feasible; (b) in the interests of affected plans and of their participants and beneficiaries; and (c) protective of the rights of participants and beneficiaries of such plans.

(3) This exemption is supplemental to, and not in derogation of, any other ERISA provisions, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of determining whether the transaction is in fact a prohibited transaction.

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transactions that are the subject of the exemption.

Accordingly, the following exemption is granted under the authority of ERISA Section 408(a), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011):

EXEMPTION

SECTION I. DEFINITIONS

(a) An "affiliate" of Phillips 66 or Spirit includes:

(1) any person or entity who controls Phillips 66 or Spirit or is controlled by or under common control with Phillips 66

or Spirit; (2) any officer, director, employee, relative, or partner with respect to Phillips 66 or Spirit; and (3) any corporation or partnership of which the person in (2) of this paragraph is an officer, director, partner, or employee;

(b) The term "Benefit Enhancements" means the following benefits, unless adjusted in a manner that is consistent with the terms of this exemption:

(i) The New Care Advocacy Service Benefit. Under this new benefit, master's degree-level licensed social workers will proactively find participants needing specialized assistance, including those diagnosed with a terminal or chronic illness or who are managing a chronic condition that has confined them to their home or a rehabilitation center. Care Advocacy support service includes participant education and assistance with respect to available community resources, and assistance with scheduling and navigating doctor's appointments, completing forms, and coordinating care with doctors and specialists.

(ii) The Enhanced Funeral Concierge Service Benefit. Under this enhancement, the Plan would extend its existing Funeral Concierge Service Benefit to provide coverage for Plan participants' family members.

(iii) The Enhanced Accelerated Death Benefit. The Plan currently provides an Accelerated Death Benefit for terminally-ill participants with life expectancy of 24

months or less to receive an accelerated life insurance benefit payment in advance of death of up to 50 percent of the participant's total life insurance benefit amount. Under this enhancement, the amount of the Accelerated Death Benefit will increase to 80 percent of a participant's life insurance benefit.

(iv) The Enhanced Accidental Death & Dismemberment Benefit. The Plan currently provides that if a participant suffers an injury resulting in Hemiplegia, the Plan would pay such participant a benefit equal to 66 percent of the participant's incurred losses from such injury. Under this enhancement, the payment will increase to 75 percent of the participant's incurred losses from such injury.

(v) The New Accidental Death & Dismemberment Benefit. Under the current terms of the Plan, if a participant dies in an automobile accident while seated in an air bag-protected position and such air bag system deployed during the accident, the Plan would not pay any additional benefit to the participant. Under this enhancement, the Plan will provide a new benefit that pays ten percent of the principal sum, up to \$25,000, upon the occurrence of this event.

Further, under the current terms of the Plan, if a participant dies 100 miles away from his or her primary place of residence, the Plan would not cover costs incurred to transport the participant's body from the place of death

to a mortuary near the participant's primary residence. Under this enhancement, the Plan will provide a new benefit of up to five percent of the AD&D policy amount, up to a maximum of \$5,000, for the cost associated with transporting the deceased participant's body to a mortuary near his or her primary residence.

Finally, the Plan currently does not cover medical costs incurred by a participant who suffers third degree burns. Under this enhancement, the Plan will enhance the AD&D benefit by paying a percentage of the principal sum based on the body area(s) and the percentage of the body surface affected.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(d) The term "Independent Fiduciary" means a person who:

(1) Is not Phillips 66 or an affiliate of Phillips 66 or Spirit and does not hold an ownership interest in Phillips 66, Spirit or affiliates of Phillips 66 or Spirit;

(2) Was not a fiduciary with respect to the Plan before its appointment to serve as the Independent Fiduciary;

(3) Has acknowledged in writing that:

(i) It is a fiduciary and has agreed not to participate in any decision with respect to any transaction

in which it has an interest that might affect its best judgment as a fiduciary; and

(ii) Has appropriate technical training or experience to perform the services contemplated by the exemption;

(4) For purposes of this definition, no organization or individual may serve as Independent Fiduciary for any fiscal year if the gross income received by such organization or individual from Phillips 66, Spirit, or their affiliates for that fiscal year exceeds two percent of such organization's or individual's gross income from all sources for the prior fiscal year. This provision also applies to a partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder and includes as gross income amounts received as compensation for services provided as an independent fiduciary under any prohibited transaction exemption granted by the Department;

(5) No organization or individual that is an Independent Fiduciary and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder may acquire any property from, sell any property to, or borrow any funds from Phillips 66, Spirit, or affiliates of Phillips 66 or Spirit while the individual serves as an Independent Fiduciary. This prohibition would continue for

a period of six months after either: (i) the party ceases to be an Independent Fiduciary or (ii) the Independent Fiduciary negotiates on behalf of the Plan during the period that such organization or the individual serves as an Independent Fiduciary; and

(6) In the event a successor Independent Fiduciary is appointed to represent the interests of the Plan with respect to the subject transaction, no time should elapse between the resignation or termination of the former Independent Fiduciary and the appointment of the successor Independent Fiduciary;

(e) The term "Plan" means the Phillips 66 Group Life Insurance Plan.

SECTION II. COVERED TRANSACTIONS

The restrictions of ERISA Sections 406(a)(1)(A) and (D), and 406(b)(1), (b)(2) and (b)(3), shall not apply to: (1) the reinsurance of risks; and (2) the receipt of premiums by Spirit in connection with insurance contracts sold by Zurich (or any successor Fronting Insurer) to provide Group Term Life and Accidental Death and Dismemberment benefits to Plan participants. In order to receive such relief, the conditions in Section II must be met in conformance with the definitions set forth in Section I.

(a) Phillips 66 must improve the Plan with the Benefit

Enhancements that are funded solely by Phillips 66 in compliance with (b) through (e) below;

(b) For every dollar that Phillips 66 and its related parties directly and indirectly benefit from the Captive Reinsurance arrangement, Phillips 66 must pay at least \$0.51 towards the Benefit Enhancements, as may be adjusted under condition (e) below (the Primary Benefit Test);

(c) The Independent Fiduciary must determine whether the Primary Benefit Test has been met with respect to each successive five-year period covered by the exemption. The Independent Fiduciary must report its determinations as part of the Independent Fiduciary's next annual report. For purposes of the initial five-year period, the Independent Fiduciary may test only the costs and benefits that inure to Phillips 66 during years two through five of the initial five-year period.

(d) (1) If the Primary Benefit Test has not been met with respect to a five-year period, Phillips 66 must reduce the participants' portion of the Plan's premium in the next consecutive year by an amount that is at least equal to the amount by which the prior five-year Primary Benefit Test was not met, plus an additional payment of interest on the shortfall, at the Code's federal underpayment rate set forth in Code Section 6621(b). The premium reduction must benefit all plan participants equally, be fully implemented during the course of the year following the last year of

the five-year period to which it relates, and be verified by the Independent Fiduciary; (2) If the captive reinsurance arrangement is terminated before the end of a five-year period (a Shorter Term), and if the Primary Benefit Test has not been met during the Shorter Term, Phillips 66 must reduce the participants' portion of the Plan's premium in the following year by an amount at least equal to the amount by which the Shorter Term Primary Benefit Test was not met. The premium reduction must benefit all plan participants equally, be fully implemented during the course of the year following the last year of the Shorter Term, and be verified by the Independent Fiduciary. Relief in this proposed exemption does not extend to prohibited transactions described in this proposed exemption that occur during the Shorter Term unless the requirements in this Subsection (d)(2) have been met. The Independent Fiduciary must ensure the premium reduction was properly implemented, notwithstanding that the Reinsurance Arrangement has already been terminated;

(e) Phillips 66 may adjust the Benefit Enhancements to the Plan at any time, if such adjustment is approved in advance by the Independent Fiduciary after the Independent Fiduciary first determines that each adjusted Benefit Enhancement is in the interest of the Plan's participants and beneficiaries and available to them on an equal basis. The cost incurred by Phillips 66 to fund the

Benefit Enhancement may be used to determine whether the Primary Benefit Test has been met. A complete description of any new Benefit Enhancements and the Independent Fiduciary's rationale and determinations regarding such enhancements must be included in the next Independent Fiduciary report submitted to the Department.

(f) Spirit must:

(1) Be a party in interest with respect to the Plan based on its affiliation with Phillips 66 that is described in ERISA Section 3(14)(G);¹

(2) Be licensed to sell insurance or conduct reinsurance operations in the Vermont;

(3) Have obtained a Certificate of Authority from the insurance commissioner of Vermont to transact business as a captive insurance company. Such certificate must not have been revoked or suspended;

(4) Have undergone a financial examination (within the meaning of the law of its domiciliary State of Vermont) by the Insurance Commissioner of Vermont within five years before the end of the year preceding the year in which the reinsurance transaction occurred;

(5) Have undergone, and continue to undergo, an examination by an independent certified public accountant

¹ Under ERISA Section 3(14)(G), a corporation is a "party in interest" with respect to an employee benefit plan if 50 percent or more of the combined voting power of all classes of the corporation's stock entitled to vote, or the total value of shares of all classes of stock of the corporation, is owned by an employer any of whose employees are covered by the employee benefit plan.

for its last completed taxable year immediately before the taxable year of the Reinsurance Arrangement covered by this exemption; and

(6) Be licensed to conduct reinsurance transactions by a state whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(g) In each year of coverage provided by a Fronting Insurer, the formulae used by the Fronting Insurer to calculate premiums will be similar to formulae used by other insurers providing comparable life insurance coverage under similar programs. Furthermore, the premium charges calculated in accordance with the formulae will be reasonable and comparable to the premiums charged by the Fronting Insurer and its competitors with the same or a better financial strength rating providing the same coverage under comparable programs;

(h) The Plan must pay no commissions with respect to the sale of such contracts or the Reinsurance Arrangement;

(i) The Fronting Insurer must have a financial strength rating of "A" or better from A.M. Best Company (A.M. Best) or an equivalent rating from another rating agency;

(j) The Reinsurance Arrangement between Spirit and Zurich or any successor Fronting Insurer must be indemnity

insurance only. The arrangement must not relieve a Fronting Insurer from any responsibility or liability to the Plan, including liability that would result if Spirit fails to meet any of its contractual obligations to Zurich or any successor Fronting Insurer under the Reinsurance Arrangement;

(k) Phillips 66 will not offset or reduce any benefits provided to Plan participants and beneficiaries in relation to its implementation of the Benefit Enhancements;

(l) The Independent Fiduciary must:

(1) In compliance with the fiduciary obligations of prudence and loyalty under ERISA Sections 404(a)(1)(A) and (B) (i) review the Reinsurance Arrangement and the terms of the exemption; (ii) obtain and review all current objective, reliable, third-party documentation necessary to make the determinations required of the Independent Fiduciary by the exemption; and (iii) confirm in writing that all of the exemption's terms and conditions have been met (or, due to timing requirements, can reasonably be expected to be met consistent with the terms of this proposed exemption) and send this confirmation to the Department's Office of Exemption Determinations at least 30 days before Phillips 66 engages in the Reinsurance Arrangement. The confirmation must include copies of each document relied on by the Independent Fiduciary and the

steps the Independent Fiduciary took to make its confirmation;

(2) Monitor, enforce and ensure compliance with all conditions of this exemption, in accordance with its obligations of prudence and loyalty under ERISA Sections 404(a)(1)(A) and (B), including all conditions and obligations imposed on any party dealing with the Plan, throughout the period during which Spirit's assets are directly or indirectly used in connection with a transaction covered by this exemption.

(3) Report any instance of non-compliance immediately to the Department's Office of Exemption Determinations;

(4) Take all appropriate actions to safeguard the interests of the Plan;

(5) Review all contracts pertaining to the Reinsurance Arrangement, and any renewals of such contracts, to determine whether the requirements of this exemption and the terms of Benefit Enhancements continue to be satisfied;

(6) Submit an annual Independent Fiduciary Report to the Department certifying under penalty of perjury whether each term and condition of the exemption is met over the applicable period. Each report must be: (i) completed within six months after the end of the twelve-month period to which it relates (the first twelve-month

period begins on the effective date of the exemption grant); and (ii) submitted to the Department within 60 days thereafter. The relevant report must include all of the objective data necessary to demonstrate that the Primary Benefit Test has been met;

(m) Neither Phillips 66 nor any related entity may use participant-related data or information generated by or derived from the Reinsurance Arrangement in a manner that benefits Phillips 66 or a related entity. Notwithstanding the above, this condition does not preclude Phillips 66 from using participant-related data solely to improve the administration of the Plan or to enhance the Plan's benefits;

(n) No amount of Spirit's reserves that are attributable to the Plan participants' contributions may be transferred to Phillips 66 or a related party;

(o) All the facts and representations set forth in the Summary of Facts and Representation must be true and accurate; and

(p) No party related to this exemption request has or will, indemnify the Independent Fiduciary, in whole or in part, for negligence and/or for any violation of state or federal law that may be attributable to the Independent Fiduciary in performing its duties under the captive reinsurance arrangement. In addition, no contract or

instrument may purport to waive any liability under state or federal law for any such violations.

Effective Date: This exemption will be in effect on the date that this grant notice is published in the Federal Register.

Signed at Washington, DC.

Timothy P. Hauser,

*Deputy Assistant Secretary for Program Operations,
Employee Benefits Security Administration,
U.S. Department of Labor.*

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